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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

MAUREEN L. BURKE,

Plaintiff and Appellant,

v.

RICHARD D. GOODFRIEND,

Defendant and Respondent.

2d Civil No. B157704
(Super. Ct. No. 1038092)
(Santa Barbara County)

Maureen Burke, appellant, brought a negligence action against Richard Goodfriend, respondent. The action arose from an injury sustained by appellant when a window in respondent's house fell on her hand. A jury verdict was rendered in appellant's favor. Pursuant to Code of Civil Procedure section 2033, subdivision (o),¹ appellant moved to recover reasonable attorney's fees incurred in proving matters that respondent had refused to admit prior to trial.² This appeal is from the trial court's postjudgment order denying the motion. Appellant contends that the trial court abused its discretion. We affirm.

¹ All statutory references are to the Code of Civil Procedure.

² Appellant also moved to recover her costs. The judgment awards appellant her costs in full.

Pretrial Requests For Admissions

Appellant propounded 10 pretrial requests for admissions. Respondent admitted one request and objected to another. He denied the remaining eight requests.

Evidence Presented At Trial

Respondent rented a room in his house to appellant. The room had a picture window that moved up and down by means of a "counterbalance system" consisting of weights attached to a rope. The window weighed between 25 and 30 pounds.

When appellant moved into the room at the beginning of October 1999, she noticed that the window was "propped up with a stick[.]" Without the stick, the window would not stay open. To close the window, appellant had to pull out the stick and lower the window down onto the sill. The window was "a deadweight."

Appellant repeatedly asked respondent to fix the window. Although respondent assured her that he would fix it, nothing was done. One evening in January 2000 the window fell on appellant's hand while she was trying to close it.

After appellant's hand was injured, respondent paid a handyman \$75 to fix the window. According to the handyman, the counterbalance system had failed because of a break in the rope that held the counterweights.

Respondent testified as follows: When he rented the room to appellant, he did not know that there was a problem with the window and that a stick was being used to hold it open. Before she was injured, appellant never complained about the window. It was not until after her injury that respondent learned that the window needed to be repaired.

Jury Verdict

The jury returned a special verdict. It found that respondent had been "negligent in the management of his house" and that his negligence had caused appellant's injury. It also found that appellant had not been contributorily negligent. The jury awarded appellant \$14,378 in economic damages and \$20,000 in noneconomic damages.

Hearing On Motion To Recover Attorney's Fees

At the hearing on appellant's motion to recover reasonable attorney's fees, she contended that respondent had "basically lied." The court responded: "It's strong

language to say he was lying when he failed to [admit] these admissions. I don't see it that way." "The fact that the jury didn't agree with [respondent's] point of view does not mean he was lying when he failed to admit these admissions. I'm going to deny your request for your expenses on this."

Statutory Framework

Section 2033, subdivision (a), authorizes a party to "obtain discovery . . . by a written request that any other party to the action admit . . . the truth of specified matters of fact, opinion relating to fact, or application of law to fact." If a party denies a request for admission and "the party requesting that admission thereafter proves . . . the truth of that matter, the party requesting the admission may move the court for an order requiring the party to whom the request was directed to pay the reasonable expenses incurred in making that proof, including reasonable attorney's fees. The court shall make this order unless it finds that (1) an objection to the request was sustained or a response was waived under subdivision (l), (2) the admission sought was of no substantial importance, (3) the party failing to make the admission had reasonable ground to believe that that party would prevail on the matter, or (4) there was other good reason for the failure to admit." (*Id.*, subd. (o).)

"The primary purpose of requests for admissions is to set at rest triable issues so that they will not have to be tried; they are aimed at expediting trial. [Citation.] The basis for imposing sanctions . . . is directly related to that purpose. Unlike other discovery sanctions, an award of expenses . . . is not a penalty. Instead, it is designed to reimburse reasonable expenses incurred by a party in proving the truth of a requested admission . . . [citations] such that trial would have been expedited or shortened if the request had been admitted.' [Citations.]" (*Stull v. Sparrow* (2001) 92 Cal.App.4th 860, 865.)

Standard Of Review

"The determination of whether a party is entitled to expenses under section 2033, subdivision (o) is within the sound discretion of the trial court.' [Citation.] . . . An abuse of discretion occurs only where it is shown that the trial court exceeded the bounds

of reason. [Citation.] It is a deferential standard of review that requires us to uphold the trial court's determination, even if we disagree with it, so long as it is reasonable.

[Citation.]" (*Stull v. Sparrow, supra*, 92 Cal.App.4th at p. 864.) "The burden is on the party challenging the trial court's decision to show that the court abused its discretion.

[Citation.]" (*Howard v. Thrifty Drug & Discount Stores* (1995) 10 Cal.4th 424, 443.)

The Trial Court Did Not Abuse Its Discretion

Appellant was not entitled to recover her expenses associated with the request for admission to which respondent objected. Appellant waived a response to this request because she failed to move to compel a further response pursuant to section 2033, subdivision (l). (§ 2033, subd. (o); *Wimberly v. Derby Cycle Corp.* (1997) 56 Cal.App.4th 618, 636.)

We review the eight requests that respondent denied:

1. Respondent was "in control of the property where and when the . . . INCIDENT occurred" Response: "Deny, tenant was in control of her room. [Respondent] could only enter with 24 hours notice or for an emergency."

Appellant did not prove the truth of this request for admission. " 'In the absence of agreement to the contrary, the lessor surrenders both possession and control of the land to the lessee' " (*Uccello v. Laudenslayer* (1975) 44 Cal.App.3d 504, 511.) In any event, the admission sought was of no substantial importance and respondent had good reason to deny it.

2. "[Appellant] injured herself when the window in her residence . . . fell onto her hand." Response: "Deny, based on lack of personal knowledge."

3. "[T]he . . . window was not working correctly, which caused the INCIDENT." Response: "Deny, based on lack of personal knowledge."

4. The "window fell onto [appellant] due to no fault or negligence of her own." Response: "Deny, based on lack of personal knowledge."

5. The "window is the cause of [appellant's] injuries." Response: "Deny, based on lack of personal knowledge."

Appellant proved the truth of the matters stated in these requests for admissions. Respondent's lack of personal knowledge did not warrant a denial if he could have ascertained the facts through a reasonable investigation: "A party responding to requests for admissions has a duty to make a reasonable investigation to ascertain the facts even though the party has no personal knowledge of the matter when the party has available sources of information as to the matters involved in such requests for admissions. [Citations.] Thus, if a party denies a request for admission (of substantial importance) in circumstances where the party lacked personal knowledge but had available sources of information and failed to make a reasonable investigation to ascertain the facts, such failure will justify an award of expenses under section [2033, subdivision (o)]." (*Brooks v. American Broadcasting Co.* (1986) 179 Cal.App.3d 500, 510; accord, *Rosales v. Thermex-Thermatron, Inc.* (1998) 67 Cal.App.4th 187, 198.)

Respondent's denials based on lack of personal knowledge were appropriate because he could not have ascertained the facts through a reasonable investigation. Appellant was the only available source of information as to the cause of the injury to her hand. No one else witnessed the incident. Respondent was not bound to accept appellant's uncorroborated account of how the injury had occurred. He justifiably believed that the matters requested to be admitted were disputable. Respondent therefore had good reason to deny them.

6. Respondent "had notice of the . . . window not working correctly before the INCIDENT." Response: "Deny, [respondent] had no knowledge of the alleged . . . window not working correctly."

7. Respondent "had a duty to remedy the defect in the . . . window." Response: "Objection misleading, admitting or denying impliedly admits a defect which is denied."³

8. Respondent "breached [his] duty to repair the . . . window." Response: "Deny, [respondent] had no knowledge of the alleged . . . window not working correctly."

³ Although appellant objected to this request, he in effect denied it by denying that the window had a defect.

Appellant also proved the truth of the matters stated in these three requests for admissions. By its express findings that respondent was negligent and that appellant was not contributorily negligent, the jury impliedly credited appellant's testimony that she had notified respondent of the malfunctioning window before she was injured. Appellant would have been contributorily negligent had she lived with the dangerous condition for months without reporting it to her landlord. The jury also impliedly found that respondent had a duty to repair the window and that he had breached this duty.

However, we need not consider whether respondent had good reason to deny these three requests for admissions. Even if respondent had no good reason, appellant failed to carry her burden of proving the amount of attorney's fees incurred in proving the truth of the matters that respondent had denied.

Appellant's motion to recover attorney's fees was presented on an all-or-nothing basis. She requested reimbursement of all attorney's fees (\$24,962.50) incurred from her receipt of respondent's denials through the end of the trial. She did not break down the attorney's fees to show the portion attributable to each matter denied by respondent. Appellant's position was that respondent had unjustifiably denied her entire case. Therefore, he was required to pay all attorney's fees incurred from the time of the denials: "[Respondent] denied *every* aspect of this case. [Appellant] was forced to prove causation, damages, as well as a lack of comparative negligence."

Appellant was not entitled under any circumstances to recover all attorney's fees incurred from the time of respondent's denials. As discussed above, respondent had good reason to deny requests for admissions relating to causation and contributory negligence. Furthermore, appellant was not entitled to attorney's fees incurred in proving the extent of her injury and the amount of her damages. These issues were not raised in the requests for admissions. If appellant wanted to recover attorney's fees associated with the issues of notice and breach of respondent's duty to repair the window, she had to provide the trial court with a reasonable basis for determining the amount of these particular fees. She provided no basis whatsoever.

Accordingly, the trial court did not abuse its discretion in denying appellant's motion to recover all attorney's fees incurred after respondent's denials of her requests for admissions.

Disposition

The judgment is affirmed. Respondent shall recover his costs on appeal.

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YEGAN, Acting P.J.

We concur:

COFFEE, J.

PERREN, J.

Denis De Bellefeuille, Judge
Superior Court County of Santa Barbara

Joseph R. Zamora, for Plaintiff and Appellant.

Richard L. Moomau; Moomau & Associates, for Defendant and
Respondent.